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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-144

13 **EVA M. MITTS-SMITH**
417 Elizabeth Way
14 Woodland, California 95695

A C C U S A T I O N

15 Registered Nurse License No. 483203

16 Respondent.

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18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 2. On or about August 31, 1992, the Board issued Registered Nurse License
24 Number 483203, to Eva M. Mitts-Smith ("Respondent"). The license will expire on
25 April 30, 2010, unless renewed.

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8. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

9. California Code of Regulations, title 16, section 1443.5, states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Drugs

11. "Roxanol," a brand of morphine sulphate, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M).

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

12. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct, as defined in Code section 2761(a)(1), in that while working as a registered nurse at Yolo Hospice, located in Davis, California, Respondent was grossly negligent. On or about March 31, 2004, during a staff meeting, Respondent failed to remain alert

1 and participate in the staff meeting that pertained to patient care, in that Respondent was
2 profoundly nodding off, unable to track what was being discussed, and got mixed up when
3 discussing patient medications. Respondent's impaired mental functioning at the staff meeting
4 concerning patient care was a serious compromise of the health, safety, and welfare of patients.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Incompetence)**

7 13. Respondent is subject to discipline under Code section 2761(a), on the
8 grounds of unprofessional conduct, as defined in Code section 2761(a)(1), in that while working
9 as a registered nurse at Yolo Hospice, located in Davis, California, Respondent was incompetent,
10 as defined in California Code of Regulations, title 16, section 1443.5, in the following respects:

11 **Patient L.C.**

12 a. Between August 14, 2003, and August 16, 2003, Respondent failed to
13 evaluate the effectiveness of the care plan for patient L.C., failed to communicate with health
14 team members, and failed to modify the health care plan as needed.

15 b. Between August 14, 2003, and August 16, 2003, Respondent failed to
16 document and complete patient records precisely and completely regarding the administration of
17 Roxanol, a controlled substance, to patient L.C., thereby endangering the patient's health, safety,
18 and welfare as more particularly set forth below:

- 19 i. Respondent failed to chart the patient visit on August 14, 2003.
20 ii. Respondent failed to chart two supplemental orders for Roxanol for
21 patient L.C.
22 iii. Respondent failed to chart the increase dosage of Roxanol for patient
23 L.C.
24 iv. Respondent failed to justify why patient L.C. was given a total of
25 2600 mgs. of Roxanol between August 14, 2003, until the patient's
26 death on August 16, 2003.

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1 **Patient N.H.**

2 c. On or about July 9, 2002, Respondent delivered unwanted medication to
3 patient N.H.'s son despite the patient's reluctance to take Roxanol, a controlled substance. In
4 addition, Respondent possessed and handled the Roxanol in a manner that was unsafe, in that
5 Respondent opened a bottle of Roxanol in her personal vehicle, spilling some of its contents, and
6 took the remaining contents to her personal residence to waste.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Falsified, Made Incorrect or Inconsistent Entries In Hospital or Patient Records)**

9 14. Respondent is subject to discipline under Code section 2761(a), on the
10 grounds of unprofessional conduct, as defined in Code section 2762(e), in that between
11 August 14, 2003, and August 16, 2003, while employed as a registered nurse at Yolo Hospice,
12 located in Davis, California, Respondent made grossly incorrect, grossly inconsistent or
13 unintelligible entries in hospital or patient records, as more particularly set forth above in
14 paragraph 13(b).

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct)**

17 15. Respondent is subject to discipline under Code section 2761(a), on the
18 grounds of unprofessional conduct, in that while employed as a registered nurse at Yolo Hospice,
19 located in Davis, California, Respondent was guilty of unprofessional conduct, as more
20 particularly set forth above in paragraphs 12 and 13.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 483203, issued to Eva M. Mitts-Smith;
2. Ordering Eva M. Mitts-Smith to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/17/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2007103401

Accusation (kdg) 11/24/08